

# THE SWISS EXPERIENCE WITH NEUTRALITY AND ITS RELEVANCE FOR MALTA

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The permanent neutrality of Switzerland is the product of a long historical evolution. It began as a practice and eventually became a legal status embodied in international legal instruments and recognized by the international community. Malta's neutrality is due to rather recent developments and is based on a policy decision later embodied in an agreement with Italy and a constitutional provision. It owes as much to the ideas of non alignment as to the concept of perpetual neutrality in a precise legal sense. There may thus be some advantage in relating the Swiss experience in order to see what lessons Malta may be able to draw from it as regards her own external policies.

## 1. Neutrality and International Law <sup>(1)</sup>

### 1.1. Neutrality in times of armed conflict

The very expression "neutrality" has been coined for a context where two or more States are in a relation of war and others must decide whether to join one side in the conflict or try to keep out of it altogether. Thus, in traditional manuals of international law, neutrality is dealt with together with the laws of war <sup>2</sup>. For the same reason, it was codified together with the laws of war at the Hague Peace Conference of 1907 <sup>3</sup>.

Neutrality in this legal sense presupposes a state of war between two or more States. Such a state used to be easy to identify as States were wont to declare war on each other before putting their armies in the field. In the rare cases of an armed attack not preceded by a declaration of war, the attacked State would immediately declare war on the aggressor. It was then prudent for third States, especially those situated in the neighbourhood, to declare their neutrality if they did not want to be drawn into the conflict. As a result of these actions, the laws of war would govern the relations between the belligerents whereas the laws of neutrality would govern the relations between each of the latter and the States which had declared their neutrality. When the war came to an end, normally by means of a peace treaty between the belligerents, the laws of peace would automatically apply again to the relations between all concerned in lieu of the laws of war and neutrality.

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Neutrality in a legal sense was therefore a temporary status following a policy decision of the State(s) concerned. Precise rights and obligations both of the belligerents and the neutrals ensued which matched each other <sup>4</sup>. The neutral State was not allowed to participate in or interfere with the hostilities in any manner whatsoever. In exchange the belligerents had an obligation to respect the neutral State's territory and nationals as well as its ships on the sea. The neutral State was entitled and indeed obliged to defend its territory against any encroachments, and this included in more recent years the air space <sup>5</sup>. The neutral State was not permitted to provide weapons and other means of warfare to a belligerent and the other side was therefore authorised to search neutral ships for such "contraband". Nationals of the neutral State within the territory of a belligerent could not be treated as enemy aliens. There were less strict rules regarding economic relations, although it was generally understood that a neutral State should not overtly favour one belligerent side at the expense of the other <sup>6</sup>.

Since 1945, war as a means of conducting international relations is outlawed by article 2 (4) of the United Nations Charter. Only in self-defence may States still use armed force. As a result, war is no longer declared, and where one breaks out, each side claims that the other has been attacking it or threatening to do so and that it therefore is acting in self-defence. Wars are now known as international armed conflicts, whose existence is determined by the de facto use of armed force. The laws of war are applicable to them and third States may still declare their neutrality <sup>7</sup>. However, there is a strong body of opinion according to which neutrality is no longer possible where the United Nations are engaged in military activities against a State found guilty of a threat to the peace, a breach of the peace or an act of aggression. At least members of the United Nations are then seen as legally bound to side with the organization against the violator of the Charter.

## **1.2 Neutralisation, policies and legal restraints of permanent neutrality**

Neutralisation is a legal undertaking by a State, either of its own free will or imposed on it by a treaty, to act in a manner which will prevent it from becoming involved in future armed conflicts <sup>8</sup>. This was the case of Belgium when its separation from the Netherlands was recognized by the major European powers in the last century. Neutralisation was also agreed on with regard to Laos at the Indochina Conference of Geneva in 1963. Switzerland obtained her neutralisation at the Congress of Vienna in 1814 / 5 as shall be shown below. Finland undertook to remain neutral in all future conflicts that might involve the Soviet Union in a treaty of friendship signed with the latter in 1948. Austria amended her constitution in 1955 to include an obligation to observe perpetual neutrality and then notified this fact to all States with which she had diplomatic relations. On the other hand, Sweden has since the last century followed policies meant to prevent her from becoming involved in any sort of armed conflict and Ireland has done the same since becoming independent in 1921. Costa Rica has adopted a neutral stance by voluntarily abolishing its armed forces in 1947.

A State which has opted for permanent neutrality has to accept certain restraints in the conduct of its foreign policy<sup>9</sup>. These have never been clearly defined by an international convention but are rather the product of long-lasting practice, especially as followed by Switzerland. The main restraint is the impossibility for a neutral country to enter any kind of military alliance. Moreover it should follow general policies that render its permanent neutrality credible, in particular by not entering such close links with one or several countries as would make it impossible to remain neutral should the latter become involved in an armed conflict. Until recently, this was seen as meaning that a permanently neutral State could not join a supranational organization such as the European Community.

### **1.3 Neutrality and non-alignment**

Non-alignment is an attitude evolved by countries of the third world as well as Yugoslavia who wished to remain outside the conflict opposing the two blocs led respectively by the Soviet Union and the United States<sup>10</sup>. Since 1962, these countries form a loose association known as the Non-Aligned Movement. Over the years they have worked out some basic principles which must be adhered to if a country wishes to be known as non-aligned. These somewhat resemble the restraints imposed on States following a policy of permanent neutrality, but only as regards the two superpowers and their military alliance systems. Thus a non-aligned country may not enter a military agreement with a superpower or a country bound to a superpower by a military alliance. But otherwise non-aligned countries remain practically free in the choice of their foreign policy. In particular they may remain close to one power bloc and hostile to the other and are in no way obliged to assume an attitude of equidistance. Non-aligned countries also may set up military alliances among themselves and assist each other in armed conflicts, at least to the extent this is not in violation of the UN Charter.

## **2. Antecedents of Swiss Neutrality<sup>11</sup>**

### **2.1. The Swiss Confederation around 1500 and its internal contradictions**

The Swiss Confederation traces its origins back to an alliance concluded in 1291 by three small alpine communities in which they promised each other assistance against any feudal power that might want to deprive them of the privilege of freedom of the Empire all enjoyed<sup>12</sup>. The alliance managed to survive initial onslaughts and to attract or conquer other rural and urban communities with similar aims until it covered about two thirds of the present territory of Switzerland. As a result the confederated communities had developed considerable military strength which they sometimes put at the service of surrounding monarchs such as the king of France. After some resounding victories on the battlefield, the Swiss decided to engage in a bit of imperialism of their own and involved themselves in the struggle for the control of Northern

Italy. However these endeavours were not universally popular and a considerable rift developed as to the advisability of continuing with expansionary policies. As a result the forces sent across the Alps became soon insufficient for the task set for them and eventually were beaten at Marignano in 1515 by the king of France.

During the same period Switzerland became split as regards the movement of reformation of the church. Some cantons became protestant whereas other remained catholic and some contained both communities. This led even to religious wars among cantons. As a result the view came to prevail that if she did not want to break apart and be swallowed up by her neighbours, Switzerland should henceforth abstain from any active involvement in armed conflicts beyond her borders. Instead, individual cantons made armed forces available to neighbouring rulers as mercenaries whose involvement in battles did not affect the canton of origin or Switzerland as a whole.

## **2.2. Swiss neutrality during the 30 years war**

This war, which ravaged much of Europe between 1618 and 1648, was in part a war of religion and the Swiss cantons were often under considerable pressure to join the side close to their particular religious views. This only confirmed the Swiss in their conviction that their only salvation lay in keeping out of any military involvement altogether. The practice they then followed has become the foundation of the classical law of neutrality, albeit with one exception. The Swiss pushed non-involvement so far as not to interfere with armed forces crossing their territory as long as they did so peacefully.

When an overall arrangement known as the Peace of Westphalia was reached in 1647 and 1648, the Swiss reaped the benefits of their attitude in that they secured recognition of their formal independence from the Holy Roman Empire and a degree of recognition of their practice of non-involvement in the armed conflicts of their neighbours.

## **2.3 Switzerland during the Napoleonic wars <sup>13</sup>**

For nearly 150 years, Switzerland was able to preserve her position of de facto neutrality and to avoid involvement in the numerous wars fought by her neighbours. But this happy state of affairs came to an abrupt halt in 1798, when the then General Bonaparte decided to forcibly bring the benefits of the revolution to Switzerland and occupied most of her territory. A united Helvetic Republic was proclaimed, with no regard for the country's ethnic, linguistic, cultural and religious diversity. As a result unrest and military coups were the order of the day and the armies of France and her enemies criss-crossed the country, with major battles being fought on its territory. Eventually Napoleon imposed a new, less unified constitution which made Switzerland a sort of French protectorate.

### **3. The legal foundation of Switzerland's present neutrality**

#### **3.1. The Congress of Vienna's handling of Switzerland <sup>14</sup>**

As the Napoleonic armies collapsed, the Swiss cantons reconstituted their loose alliance of sovereign entities and sought recognition of this confederation at the Congress of Vienna. They also sought restoration of their perpetual neutrality.

The powers of the Congress in their turn had no wish to become involved in battles over who would control the several passages over the Alps within Switzerland. They admitted that the existence of an independent and neutral Switzerland was indeed in their interest. They produced a Declaration on March 20th, 1815 that they would recognise and guarantee Swiss neutrality provided that Switzerland formally accepted such a declaration. However the return of Napoleon for 100 days interrupted everything and Switzerland was forced to let the allied troops pass through her territory in order to invade France. After the final demise of Napoleon, negotiations were resumed on the basis of a Swiss draft declaration of neutrality, which was endorsed by the major powers on November 20th, 1815 with only minor alterations.

The Declaration states that the powers formally recognise the perpetual neutrality of Switzerland and guarantee the integrity and inviolability of the latter's territory. The powers moreover decided to neutralise parts of Savoy contiguous to Switzerland for better protection of the latter's neutrality.

#### **3.2. Switzerland, the 1919 Paris Peace Conference and the League of Nations: Differential Neutrality <sup>15</sup>**

Switzerland sent negotiators to the Peace Conference of 1919 to ensure that her neutrality would not be affected. In fact the Treaty of Versailles formally recognised it while abolishing the neutralisation of Upper Savoy and Switzerland's right to militarily occupy that territory if this was required in the interest of her own neutrality. Switzerland herself was not a signatory of the Treaty of Versailles, but she had expressed her agreement with the above provisions.

More difficult was the question of whether Switzerland could become a member of the newly created League of Nations. The Covenant of the League set up a system of collective security under which member States were obliged to participate in punitive actions decided by the League's Council against members who contravened the principles and rules of the Covenant. Such actions could take the shape of economic sanctions or military operations.

Switzerland, which had just bought the confirmation of her neutrality by enouncing her rights in Upper Savoy, was in no mood to abandon her status in order to become a member of the League. After long negotiations, a compromise was found. The Council of the League, in a declaration of February

13, 1920, noted the unique nature of Swiss neutrality and its contribution to international peace, which meant that its continuation lay in the interest of the international community. Switzerland was formally freed from any obligation to take part in military sanctions or to allow armed forces engaged in such sanctions to pass through her territory. In exchange she agreed that she would participate in non-military sanctions, even at the risk of somewhat compromising a policy of strict neutrality. As a result, Switzerland became a member of the League following a national referendum which endorsed the proposal of the government to that effect.

#### **3.4. Switzerland's declaration of return to integral neutrality in 1938 16**

Switzerland became a very active member of the League under what became known as a policy of "differential neutrality". When Italy invaded Abyssinia in 1935, she willingly voted for economic sanctions and decreed a partial embargo on exports to Italy. However, when it became clear that Britain and France had only voted for the sanctions to ignore them thereafter, Switzerland began to reconsider her position. Two of her neighbours, Italy and Germany, had left the League and Austria was thereafter absorbed by Germany, leaving only France as a neighbour still belonging to the League. This let the Swiss Government to issue a statement on May 11th, 1938 according to which Switzerland henceforth would return to a policy of strict neutrality, while not changing in any other way her attitude with regard to the League of Nations.

### **4. The practice of Swiss neutrality**

#### **4.1. 19th century conflicts 17**

During the first decades following the peace settlement of 1815 no major military conflicts occurred in the immediate neighbourhood of Switzerland. However, the general political climate in the surrounding countries led to a considerable stream of prominent refugees seeking asylum in Switzerland. This caused major difficulties with the governments concerned, which Switzerland found hard to handle as she still was a loose association of sovereign entities with hardly any central competences. From the 1830s onwards, Switzerland became absorbed in her internal affairs as an ever stronger movement promoted liberal reforms within the cantons and sought to establish a federal State with relatively strong central powers. This led to skirmishes between progressive and conservative cantons. The latter eventually sought an alliance with Austria to preserve the status quo, in clear contradiction with the official policy of neutrality. A brief civil war ensued which ended with the victory of the progressive cantons and the immediate drafting of a federal constitution which was adopted in 1848, the very year when socialist revolutions broke out all around Switzerland.

The new federal State managed to weather this first storm only to become involved in a far more perilous situation when the people of the Canton of Neuchatel, which up to then had as its nominal ruler the king of Prussia, decided to set up a republic. The king seriously considered military intervention but eventually relented under strong pressure from Britain. Swiss neutrality had also to be preserved during the war of Italian unification, in which Austria and France took also part and as a result of which Upper Savoy changed hands and became French. The brief war between Prussia and her German allies and Austria in 1866, in which Italy took also part, was again involving immediate neighbours. Although some skirmishes took place close to the border, the war was over so quickly that Switzerland hardly had time to organize armed protection of her frontiers. On the other hand, the Franco-Prussian war of 1870 / 1 several times menaced to engulf border regions of Switzerland as military strategies of both sides contemplated sending their armies through Swiss territory in order to attack the enemy from an unexpected direction. Eventually the only major incident was the surrender of a whole French army to the Swiss who had to disarm it and find food and shelter for thousands of men.

#### **4.2. The first world war <sup>18</sup>**

This war began with the invasion of Belgium, another neutral country, by Germany, in complete disregard of relevant treaty obligations. Switzerland had therefore to fear a similar fate, all the more so as both France and Germany had plans to attack all the more so as both France and Germany had plans to attack each other by sending armies through Swiss territory. Fortunately no such plans were implemented. Thanks to her neutrality Switzerland also overcame the internal problem of her German-speaking population sympathising with Germany and the French-speakers sympathising with France. Switzerland also played a major role as protecting power of the belligerents and as a centre of exchange of wounded and sick prisoners of war. Towards the end of the war public opinion became ever more favourable towards an international institution to maintain peace, as a result of which the later decision to join the League of Nations was greatly facilitated.

#### **4.3. The inter-war period <sup>19</sup>**

As already indicated, Switzerland became an active member of the League of Nations. She also developed further the idea that neutrality in legal and military terms does not mean ideological neutrality. After it was found that the Soviet diplomatic mission had been involved in subversive activities, diplomatic relations with the USSR were broken and Switzerland strongly objected to the idea of admitting that country to the League of Nations.

However it was the rise of fascism and national-socialism which brought new perils for Switzerland's neutrality. Germany openly claimed German-speaking Switzerland as hers and so did Italy with regard to Italian-speaking

regions. This led to a closing of ranks among the Swiss population of all languages and political persuasions against the two would-be annexors and their ideology. Especially Germany became the target of violent press attacks which led to extremely tense situations. The Swiss government however refused to control the press, further emphasizing the non-ideological aspect of Swiss neutrality.

#### **4.4. The second world war <sup>20</sup>**

Swiss military preparation for self-defence had been stepped up during the last pre-war years and full mobilization took place as soon as the war broke out. The most crucial moment appeared to be May and June 1940, when Hitler's armies overran France and Mussolini's troops tried to meet with them along the Swiss border. This failed to materialise thanks to strong French resistance, so that until 1944 landlocked Switzerland had access to the sea through a nominally independent part of France. But in fact she was surrounded by Axis powers and their subjects and in no position to maintain an even-handed approach to both sides in the war. As allied troops drove Germany out of France and Italy, there was again a risk that Swiss territory might be crossed. Moreover, Switzerland came under very strong pressure to participate in the economic boycott of Germany and to hand over to the allies all German property. In difficult negotiations a solution was reached after the war which did not overly compromise the general attitude of neutrality of Switzerland.

#### **4.5. Swiss neutrality and the UN <sup>21</sup>**

The United Nations Organization was set up as an alliance against the Axis powers while the second world war still on. In such a body, there was no room for neutrals who were only allowed to send observers to San Francisco. The observers from Switzerland concluded in their report to the government that the new organization had powers to enforce participation in economic and military sanctions, even against non-members, which would make it impossible for Switzerland to maintain her traditional neutrality as a member. Thus, when after the end of the war the Organization invited neutral countries to become members, Switzerland, contrary to Finland, Ireland and Sweden, did not apply.

In the years that followed, when the UN was split into two camps by the cold war, there appeared to be no reason for Switzerland to change her attitude. Even when neighbouring Austria became neutral in 1955 and nevertheless joined the United Nations, Switzerland decided not to follow her example. The situation then still was that only neutral Austria separated Switzerland from the Warsaw Pact countries, so that there was a strong possibility of wars being fought along her borders. But as in prewar days, there was no ideological dimensions to Swiss neutrality. Public opinion was overwhelmingly anti-communist and supporting the ideals of Western democracy. Switzerland was even able to be of some help in situations where the UN was directly involved



in a conflict, as happened in Korea in the 1950s. To this day Switzerland is represented on the armistice control commission in Panmunjon.

However, as the United Nations, in the wake of decolonization, became increasingly universal, Switzerland found it more and more difficult to claim a neutral stance between the Organization and a country it branded a violator of the general principles of the Charter. When therefore the Security Council instituted economic sanctions against Rhodesia in 1965. Switzerland found that a position of neutrality in the traditional sense would in fact favour Rhodesia against the UN. She therefore froze her economic relations at the level of the year preceding the imposition of sanctions and followed the UN in refusing diplomatic recognition of the breakaway country and eventually even closing down her consular offices.

By the end of the 1960s the Swiss government had come to the conclusion that the manner in which the Charter provisions relating to collective security were applied in practice would not compromise her perpetual neutrality should she become a member of the Organization. Parliament approved the proposal to seek membership while making a formal statement regarding the continuing policy of neutrality. However, the Swiss people, who under mandatory provision of the constitution had to vote on the issue, rejected by 3 to 1 the idea of adhering to the UN.

#### **4.6. Swiss neutrality and the European Community**

Being situated in the centre of Europe, Switzerland had always favoured moves towards European unity, if only to end the recurrence of wars among her neighbours. On the other hand, the very strict interpretation of her neutrality led her government to be very cautious when considering membership of organizations promoting such integration. Thus Switzerland became a member of the Council of Europe only in 1961. She chose not to join the European Coal and Steel Community of 1952 nor the European Economic Community of 1957. Instead she actively participated in the planning and implementation of the European Free Trade Area of 1959.

As the European Communities grew both in size and actual integration, Switzerland found that more than two thirds of her trade was with member countries and that she had to adjust increasingly her economic legislation to Community rules. After the unification of the communities and the launching of ambitious plans for monetary and political integration, Switzerland had to consider whether staying out was any longer advisable and indeed even feasible. Together with other neutral countries of EFTA she initiated negotiations in 1990 aiming at the creation of a European Economic Space which would encompass both the EC and EFTA and under whose rules EFTA countries could somehow participate in the making of EC decisions that would affect them.

The collapse of communist regimes in Eastern Europe in the same year created a completely new situation with the possibility of Eastern European countries applying for EC membership having to be considered. Moreover

Austria, Finland and Sweden felt that the end of the cold war fundamentally affected their interpretation of permanent neutrality, to the point where they now could contemplate membership of the EC. This left Switzerland very much on her own, with negotiations for a European Economic Space taking an ever more disappointing turn. Increasingly, there are voices both in the government and parliament and in the public which advocate membership of the EC, even at the cost of a considerable re-interpretation of the meaning of perpetual neutrality. However, public opinion remains very divided on the issue.

#### **4.7. Swiss neutrality and the Gulf war**

The end of the cold war not only affected developments in Europe: It also unblocked mechanisms in the United Nations which had been jammed since the early days of the Organization. When Iraq invaded Kuwait in August 1990, there was immediate response from the Security Council which condemned the aggression and decreed an economic embargo of Iraq. It later decided to authorise military enforcement action by troops of member countries which had been assembled in Saudi Arabia. All this placed Switzerland into a difficult position, as once again economic neutrality would in fact have favoured Iraq. The Swiss government therefore decided to join unilaterally the worldwide embargo while re-affirming Swiss neutrality in military matters. Thus, when actual military operations began, Switzerland closed her airspace to any military aircraft except those transporting medical and other relief equipment. This contrasted with Austria, where overflights were readily allowed.

#### **4.8. An evaluation of Swiss neutrality as it has been practiced**

The following salient traits appear to result from ancient and recent Swiss practice:

- i. The purpose of a policy of perpetual neutrality is to allow for formal neutrality in any kind of war, but more specifically in a war between neighbours of Switzerland or in which such neighbours are involved.
- ii. To ensure this, Switzerland must abstain from involvement in any kind of military alliances and agreements. She must at all times be able to dissociate herself from any country engaging in war to the extent necessary for maintaining a credible and legally consistent neutrality with regard to such a war.
- iii. Swiss neutrality must be armed, i.e. the country must be in a position to defend herself in times of war against attacks or encroachments from any belligerent side.
- iv. Swiss neutrality is not ideological. Swiss citizens and media are free to express their views on other countries and ideologies as long as this does not infringe Swiss libel laws.

- v. Swiss neutrality is not part of Switzerland's written constitution which makes only a passing reference to it when defining the functions and powers of the government. This means that Swiss authorities are relatively free to define the precise content of their policy of permanent neutrality in the light of the prevailing international situation. The relatively rigid approach followed during the 1950s and early 1960s was rather an exception in this regard.
- vi. In times of peace, Switzerland does not feel that permanent neutrality greatly hampers her freedom in dealing economically with other countries. The negative attitude as regards accession to the European Community was dictated by the fact that this is a supranational institution whose decisions and rules prevail over those of the member States. Moreover, most members of the EC are also members of the NATO Alliance.

## **5. ' Comparison with other neutral States**

### **5.1. Austria <sup>22</sup>**

Austrian neutrality dates from 1955, when a peace treaty ending the situation resulting from the second world war was being negotiated. Austria amended her constitution by including a provision that she would follow a policy of perpetual neutrality along the same lines as Switzerland. This was notified to all governments with which Austria had diplomatic relations. None objected and this is seen as a worldwide recognition of Austrian permanent neutrality. Shortly thereafter Austria became a member of the United Nations. Her neutrality was mentioned but no special declaration was made as later envisaged by Switzerland. Ever since Austria and Switzerland have closely consulted with each in other in all matters relating to their neutrality. Austria had a more outgoing approach and presently sees no reason to remain outside the EC. She has already officially applied for membership. On the other hand, there appears to remain a great popular attachment to neutrality as such, so that voices suggesting a re-orientation of foreign policy approaches have had a rather negative response.

### **5.2. Finland <sup>23</sup>**

Finnish neutrality is based on a provision (art. 4) of her Treaty of Friendship with the Soviet Union of 1948, which refers to art. 3 of the Finnish Peace Treaty of 1947, which in turn refers to an earlier Finnish-Soviet Treaty of 1940. The upshot of it is that Finland and the Soviet Union undertake not to conclude or accede to an alliance directed against the other side. The Finnish view ever since has been that Finland may stay neutral in the cold war confrontation, but with a special obligation to do nothing even remotely hostile to the Soviet Union. This led to a very cautious foreign policy, avoiding early

accession to such European organizations as the Council of Europe and even the European Free Trade Association. Only the lessening of East-West tensions in the 1960s and early 1970s have allowed Finland to become a more active participant in European affairs <sup>24</sup> . However, until a year ago, the very idea of joining the European Community was seen as totally impossible. After the collapse of communist regimes in Eastern Europe and the developments in the Soviet Union in early 1991, this stance was however completely abandoned and Finland now actively seeks membership of the EC.

### **5.3. Sweden <sup>25</sup>**

Sweden used to be one of the greater military powers of Northern Europe. However, since the end of the Napoleonic wars, she has followed a consistent policy of avoiding involvement in military conflicts. This let her stay neutral also in the first world war, and at least since then, Sweden, in spite of the lack of any formal international commitment, is seen as a permanently neutral country. As a result, Germany refrained from attacking her in 1940. Sweden joined the United Nations as soon as neutrals were invited to do so and she has been very active in the Organization. Sweden has been contributing troops to most peacekeeping operations and never felt that her neutrality should apply in cases where the UN imposed economic or military sanctions. During the cold war, Sweden tended to follow a policy of even-handedness even as regards political statements. She condemned both the USA and the USSR for what she saw as breaches of international law, and of all the European neutrals she showed the earliest and deepest affinity with the Non-Aligned Movement. Like Switzerland, Sweden found accession to the European Community incompatible with her traditional policies of permanent neutrality. After the events of 1990 however, she abruptly changed her stance and is now applying for full membership.

### **5.4. Ireland <sup>26</sup>**

Ireland stayed neutral in the second world war because of her hostility to Britain, stemming from the conditions under which she got independence in 1921 and the fact that Britain continued to occupy Northern Ireland. After the war, this occasional neutrality was transformed into a policy of permanent neutrality, in particular as regards the East-West confrontation. As far as the United Nations are concerned, Ireland has never felt that she should remain neutral where the Security Council decided to apply economic or military sanctions. Irish troops regularly take part in peacekeeping operations.

### **5.5. Others**

Since the second world war Costa Rica has declared herself perpetually neutral in 1947 and for this purpose dissolved her armed forces. Cambodia

tried to remain neutral in the Vietnam War and to gain recognition as a perpetually neutral country, but these efforts came to naught when the USA invaded the country in 1971. Laos declared herself neutral in 1962 and this was recorded by the international conference meeting in Geneva the same year. However, after the collapse of South Vietnam in 1975, a communist government took over in Laos and neutrality was abandoned *de facto*.

## **6. Malta's neutrality <sup>27</sup>**

### **6.1. Antecedents**

Under British rule Malta was an important strategic asset. There was a huge naval base and important forces were stationed in Malta all the time. When NATO was established, Malta became the Mediterranean headquarters of the Organization. At independence in 1964, a Mutual Defence and Assistance Treaty was signed with Britain, under which she was able to continue to use her military facilities on the islands.

A rather radical change of policies occurred when the Malta Labour Party came to power in 1971. Negotiations were initiated to end British military presence, which led to an interim agreement in 1972, under which that presence had to be terminated by 1979. The NATO headquarters were removed. In 1973, Malta became a member of the Non-Aligned Movement. The idea to neutralise the country was launched in 1976. The intention was that Malta's neutrality would not only be recognized but also guaranteed by other countries. The then Italian Foreign Minister suggested a joint recognition and guarantee by Italy, France and the Maghreb countries. However the Government of Malta preferred to negotiate such recognitions and guarantees bilaterally with the countries concerned.

### **6.2. International and national legal foundation of Malta's neutrality**

In December 1980, Malta and Italy exchanged notes containing a declaration that Malta would henceforth be a permanently neutral State. Italy undertook to guarantee this neutrality and both sides were to seek recognition and guarantee from Mediterranean and other countries. This exchange was ratified and instruments of ratification were exchanged in May 1981. Recognition was expressed in reply to requests from Malta by France, Yugoslavia, Greece, the Soviet Union, Algeria, Libya and Tunisia, but none of these countries undertook to guarantee Malta's neutrality. To this day, Italy remains the sole guarantor.

On May 15th, 1987, the Constitution of Malta Amendment Act IV was adopted, which reproduces the Maltese declaration of 1980 and thus makes it a fundamental rule of internal law.

### **6.3. The content of Malta's neutrality**

In the relevant texts it is affirmed that

Malta is a neutral State, actively pursuing peace, security and social progress...by adhering to a policy of non-alignment and refusing to participate in any military alliance.

To this are added various undertakings regarding the non-toleration of military bases and the like. There is also an express affirmation that Malta's neutrality shall not prevent her from participating in any actions decided by the UN Security Council under Chapter 7 of the Charter.

The combination of neutrality and non-alignment may surprise at first sight. The manner in which it is formulated however clearly indicates that Malta's policy of non-alignment is merely an element of her overall policy of permanent neutrality. In other terms, she has undertaken to remain neutral in any future conflict except where the UN Security decides military sanctions or where she has to react in self-defence against a violation of her neutrality. This view is confirmed by the Italian guarantee under which Italy undertakes to assist Malta in such situations of violation of her neutrality in conformity with the principle of collective self-defence as formulated in Article 51 of the UN Charter.

The antecedents of the Maltese declaration and the manner in which foreign policy was conducted after its adoption leave however some room for ambiguity. It rather clearly appears that what Malta sought essentially was a guarantee of her inviolability by her immediate neighbours on the Northern and Southern shores of the Mediterranean. The attitude towards the world at large was covered by a policy of non-alignment. In a similar vein one notes that under a Treaty of Friendship and Cooperation concluded with Libya in November 1984, the two sides undertook to exchange military information and Malta unilaterally undertook not to allow her territory to be used in any aggressive design against Libya. This last provision would appear pointless, as such abstention is the essence of a policy of permanent neutrality. On the other hand, exchange of military information might be seen as rather incompatible with that same policy. The clauses in question were abolished by an agreement between the two countries of November 1990.

### **6.4. The dynamics of Malta's neutrality**

Over the last 20 years, Malta has been an eloquent defender of closer relations between the countries around the Mediterranean. She has vainly tried to get North African countries included in the Conference on Security and Cooperation in Europe and she has obtained from the latter a declaration regarding Mediterranean, as well as a special meeting on Mediterranean questions in October 1990 in Palma de Mallorca, where the idea of a Conference on Security and Cooperation in the Mediterranean was mooted.

From all this one may conclude that whereas Malta was certainly intent on protecting her own security through a guaranteed status of permanent neutrality, she also, and probably to a much greater extent, intended to use that status as a means of further promoting her ambitious as spokesman for closer relations among Mediterranean countries, in particular between those on the Northern and Southern shores.

## **7. Concluding remarks**

### **7.1. Comparison of Maltese and Swiss views**

In part the initial incentive to seek neutrality has been the same for both countries. Switzerland was situated in the middle of a region of greater powers continually at loggerheads with each other and at times vying for the control of the Swiss mountain passes over which their armies could be sent from North to South or South to North. Malta lies in the very centre of the Mediterranean which, in the 1970s, was the object of major power struggles between countries bordering it as well as far away superpowers. Neutrality in both cases, if generally recognized by these in the vicinity, became a protection as well as a means of avoiding being drafted into one or the other of contending camps.

Swiss neutrality has however had the additional reason of preventing a linguistically, culturally and religiously fragmented country from breaking apart under the strains resulting from affinities with neighbouring regions. Malta on the other hand is culturally, linguistically and religiously homogenous, so that attractions from nearby countries and cultures do not as such threaten disruption.

Swiss neutrality was always seen first and foremost as a means of keeping the country out of possible wars. In the field it was wholly successful. Should war cease to be a probability in Europe, there would be not much left to justify a continued policy of permanent Swiss neutrality. Maltese neutrality, strongly influenced by the concept of non-alignment, is much more concerned with tensions and conflicts short of war, in particular right now the North-South antagonism due to uneven development. The aim of Maltese neutrality in this context is less to keep aloof than to have the possibility to act as an intermediary and mediator, both politically and economically.

Swiss neutrality was always armed. The chances of defending the territory of Switzerland are enhanced by its geographical configuration, which allows at least in the central part for effective resistance with relatively modest means. Switzerland also had the means and the will to keep her armed forces in proper preparedness and suitably equipped. Malta is a group of small islands in the middle of the Mediterranean. There is no way in which she could resist effectively a determined attempt at invasion with her own means. Thus the choice of neutrality was meant to lessen the danger of invasion and to obtain certain guarantees from neighbours and especially Italy. As a result, Malta, like Costa Rica practices a non-armed neutrality. Her armed forces serve mostly for peace-time purposes.

## **7.2. The objective context: is there room for neutrality in present Europe, the Mediterranean, the world at large?**

The heyday of European neutrals – and non-aligned – came with the CSCE process, especially in its initial stages, when the N + N (neutral and non-aligned) Group acted both as go-between and initiator of compromise proposals. This role is most likely over as a result of the present multipolarity combined with a much greater amount of shared beliefs and goals. New conflicts have mainly emerged inside existing composite States and neutrality is much more difficult to observe in such situations, as Austria is currently finding out with regard to Yugoslavia. One might also imagine irredentist conflicts between States aiming at changes of borders to bring minorities from one country to another. Here again there may be little room for neutrality as regards countries with close affinities to such minorities. Generally, Europe will have to set up much stronger central mechanisms to maintain peace and keep order among its tumultuous populations. Such mechanisms will not allow for neutrality, as their success will be dependent on their commands being obeyed by all.

The situation in the Mediterranean is very different. The divide between European and Arab riparians with Turkey and Israel being neither is likely to deepen as regional integration progresses on both sides. There is still a lack of cultural and even human mutual understanding which tends to exacerbate even minor problems and conflicts. Therefore Malta's self-chosen role as mediator will gain in importance even if her means may be inferior to the task she has set herself. There is also a danger that economic and cultural links with Europe will easily outweigh the shallow closeness to the Arab world resulting from a common language and relatively close human relations. However Malta could and should continue to be the focal point of attempts to keep the pan-Mediterranean dialogue alive in as many fields as possible, and in this respect her very special brand of neutrality-cum-non-alignment may be of some help, even if this should not be overrated.

## **7.3. Conclusion**

For Malta, the long experience of Switzerland with permanent neutrality serves mainly as an illustration of the possibilities and limitations of such a policy. But the conditions and general environment of the two countries are too different to allow for many analogies. Good knowledge of the the Swiss experience may help to avoid pitfalls or unjustified expectations, but as far as practical policies for the future are concerned, Malta will have to find her very own way by herself.



1. For a recent brief overall description see the article of BINDSCHEDLER, R. L.: *Neutrality, Concept and General Rules* in *Encyclopedia of Public International Law*, 4, pp. 9 – 14.
2. Thus, OPPENHEIM's *International Law*, vol. 2 is made up of three parts: *Settlement of State Differences* (i.e. disputes), *War and Neutrality*. This presentation has been maintained up to the latest edition by LAUTERPACHT.
3. See *Conventions V (Rights and Duties of Neutral Powers and Persons in War on Land) and XIII (Rights and Duties of Neutral Powers in Naval Wars)*.
4. For a recent summary of these rights and duties, consult the articles of MADDERS, ZEMANEK, KUSSBACH, DINSTEIN in *Encyclopedia of Public International Law*, loc.cit., pp. 14 – 31.
5. During the time the author was working in the legal division of the Swiss foreign ministry, the question of whether there was a duty for neutral States to oppose the passage through their air-space of ballistic missiles was seriously considered. In view of the extreme difficulties of taking any effective measures against such brief passages it was decided that the neutral State could not be considered as violating its duties if it failed to intercept such missiles.
6. In the early years of the second world war the USA nevertheless undertook a major effort to support first Britain and then the USSR in their war effort against Germany, including by providing them with weapons, warships and warplanes, while remaining nominally neutral. See OPPENHEIM – LAUTERPACHT, *International Law*, 7th edition, 1952, pp.637 – 640.
7. See SCHINDLER, D.: *Transformations of the Law of Neutrality Since 1945*, in: *Humanitarian Law of Armed Conflict: Essays in Honour of Frits Kalshoven*, Dordrecht 1991, Martinus Nijhoff, pp. 267 – 386.
8. See the article of VEROSTA, S. in *Encyclopedia of Public International Law* loc.cit., pp. 31134.
9. See the concise article of BINDSCHEDLER, R.L. in *Encyclopedia of Public International Law*, loc.cit., pp. 133 – 139.
10. For detailed information consult ŠUBRA RAO, T.V.: *Non-Alignment in International Law and Politics*, 2nd ed. and WILLETTS, P.: *The Non-Aligned Movement*.
11. See BONJOUR, E.: *Histoire de la neutralité suisse*, Neuchâtel 1949, La Baconnière, chapter I.
12. An entity enjoying freedom of the Empire was directly subject to the Holy Roman Emperor and thus was not bound to any lesser feudal power. Such freedom was mainly given to newly founded cities but the Swiss cantons of Uri, Schwyz and Unterwalden had obtained the same privilege soon after the opening of the Gotthard passage over the Alps.
13. See BONJOUR, op.cit., chapters V and VI.
14. See BONJOUR, op.cit., chapter IX.
15. See BONJOUR, op.cit., chapter XXI.
16. See BONJOUR, op.cit., pp. 354 – 357.
17. See BONJOUR, op.cit., chapters X – XIX.
18. See BONJOUR, op.cit., chapter XX.
19. See BONJOUR, op.cit., chapter XXI.
20. See BONJOUR, op.cit., chapter XXII.
21. In three reports, beginning in 1967, the Swiss government has exhaustively reviewed the implications of the UN Charter for Swiss neutrality, both as a non-member and as a member of the organization. In 1981, these considerations were once more reviewed in a message to the parliament regarding the accession of Switzerland to the United Nations (*Message du Conseil Fédéral à l'Assemblée Fédérale* du 21 décembre 1981, *Feuille fédérale* 1982 I p. 505).
22. See *Encyclopedia of Public International Law*, loc.cit., pp. 135 – 6 and bibliography p. 138.
23. See CAMILLERI, T. *The Neutrality of Malta*, LL.D. thesis 1991, pp. 126 – 7, JAKOBSON, M.: *Finnish Neutrality*.
24. This became manifest when, at the prompting from the USSR, Finland convened a Conference on Security and Cooperation in Europe in 1973 and again in 1975, this time at the level of heads of State and government to sign a Final Act.
25. See ASTROM, S.: *Sweden's Policy of Neutrality*.
26. See CAMILLERI, op.cit., pp. 133 – 137.
27. For a full account and discussion consult CAMILLERI op.cit., pp. 49 – 116. Also see RONZITTI, N.: *Malta's Neutrality*, *Italian Yearbook of International Law* I, 1985.